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MAR 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 18, 1998

VIA HAND DELIVERY

Magalie Salas, Esquire
Secretary

Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Re: In the Matter of Implementation of
Section 309(j) of the Communications
Act - Competitive Bidding for Commercial
Broadcast and Instructional Television
Fixed Service Licenses
MM Docket No. 97-234

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's Rules, the Commission is advised that on March 17, 1997, Dr. Arnold S. Seigel, representing the University of Maryland, Dr. Michael Kelly, representing the George Mason University Foundation and Mr. Thomas Pyle, Executive Director, Network for Instructional TV, accompanied by the undersigned, met with members of the Commission's staff and discussed the issue raised in the above-referenced proceeding of whether auctions should be employed in the Instructional Fixed Television Service.

The following members of the Commission's staff were present: Barbara A. Kreisman, Chief, Video Services Division, Mass Media Bureau; Charles Dziedzic, Assistant Chief, Video Services Division and Jerianne Timmerman, a member of the staff of the Video Services Division.

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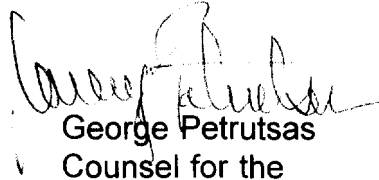
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Magalie Salas, Esquire
March 18, 1998
Page 2

The substance of the presentation is summarized in the attachments. Two copies are provided. Please associate with the Commission's file for MM Docket No. 97-234.

Very truly yours,

FLETCHER, HEALD & HILDRETH, PLC

A handwritten signature in dark ink, appearing to read "George Petrutsas", is written over the typed name.

George Petrutsas
Counsel for the
University of Maryland

GP:cej

Enclosures

cc: Barbara A. Kreisman, Esquire (w/enc.)
Mr. Charles Dziedzic (w/enc.)
Jerianne Timmerman, Esquire (w/enc.)

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COMMUNICATIONS

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Ex parte presentation to FCC staff
by representatives of Washington, D.C. area
ITFS licensees on auctioning ITFS
licenses (MM Docket No. 97-234)

MAR 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In MM Dkt. No. 97-234, the Commission asks, in view of the 1997 amendment of Section 309(j) of the Communications Act, whether the Commission is required to employ auctions in choosing among mutually exclusive ITFS applications and, if not required by law to do so, whether to employ auction as a matter of policy. Our views on these questions are that one way or another the Commission should not apply auctions in the ITFS Service.

While, as the Commission points out, ITFS was not expressly exempted from the auction legislation, we agree with those who have argued that the Commission should interpret the legislation broadly so as to include ITFS stations within the categories of "noncommercial educational" and "public" "broadcast" stations, which are specifically exempted. Congress could not have intended to impose auctions on the ITFS service while exempting "noncommercial educational" broadcast stations. Both categories are for educational purposes; both are exempted from application and regulatory fees.

The Commission has previously interpreted the term "broadcast" to include non-broadcast stations. For example, not long ago, the Commission made available to licensees of point-to-point microwave stations the tax certificates which the Congress provided in the tax code for "broadcast" stations. A broad reading of the new legislation to include ITFS stations within the scope of the noncommercial educational "broadcast" station would not only make good sense but it would be consistent with the Commission's broad interpretation of the term "broadcast station" in the tax code.

Auctioning ITFS licenses would not be good public policy. Auctions could change the nature and purpose of the service. The ITFS licenses in this area are held by the

local universities, colleges, and by other educational institutions. And this is as it should be. We doubt very much that the licenses would be held by the local school systems, if they would have been awarded by competitive bidding, or that they would be used to provide, for example, the extensive instructional educational service, the University of Maryland now provides.

While, in this area, where the ITFS licenses have been awarded, the impact of auctions would not be substantial, it would make it more difficult for current licenses to effect changes in facilities or expand service areas. We cannot see the benefit of using auctions in these situations. The points system now in effect is more likely to bring about results more consistent with the objectives of the service, particularly in areas such as this, where the only likely applications would be for service expansion or facilities improvements.

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ITFS Auctions

Congress did not intend to auction ITFS.

- no mention in legislative history

Interpreting the Budget Act to require ITFS licenses to be auctioned would be inconsistent with past FCC actions.

- no payment of regulatory fees/filing fees
- not required to contribute to Universal Service Fund
- apply same financial qualification standards to ITFS as noncommercial Radio/TV

ITFS auctions will pit educators against educators.

- transfer of \$ from local education to national treasury
- educators will be forced to seek more commercial uses of spectrum to offset auction fees

ITFS auctions will cause further delay in processing applications.

- ITFS auction specific rules will need to be developed
 - open outcry
 - geographic licensing of whole areas
- pending applications should not be auctioned